Filed 7/21/20 Levy v. Lin CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MICHAEL J. LEVY, Cross-complainant and Appellant, v. JACK LIN et al., Cross-defendants and Respondents.	B294392 (Los Angeles County Super. Ct. No. LC103980)

APPEAL from a judgment of the Superior Court of Los Angeles County, John J. Kralik, Judge. Affirmed.

Bergman Law Group and Daniel A. Bergman, for Cross-complainant and Appellant Michael Levy.

Silver and Arsht, Samuel J. Arsht, Jeffrey A. Meinhardt and Marsha C. Brilliant, for Cross-defendants and Respondents Jack Lin and Betty Ann Lin.

Harrington, Foxx, Dubrow & Canter, Michael E. Jenkins and Zakiya N. Glass, for Cross-defendant and Respondent Allison Levy.

Jack Lin and Betty Ann Lin sued their daughter, Allison Levy, and her estranged husband, Michael Levy, for breach of an oral contract and other causes of action arising out of the Lins' payment of $1.4 million related to the purchase of a new home for the Levys. The Lins alleged the payment was a loan the Levys failed to repay. Michael cross-complained against the Lins and Allison seeking, among other claims, a declaration the $1.4 million was a gift.[1] After a seven-day bench trial the court found the $1.4 million payment was partially a loan and partially a gift. The court entered judgment against the Levys on the breach of contract cause of action, awarding the Lins $625,000 in damages. On appeal Michael contends the court's ruling was not supported by substantial evidence and, even if it were, the oral contract was not enforceable as a matter of law. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Purchase of the Mont Calabasas House and Subsequent Transactions*

On October 8, 2013 the Levys submitted an offer of $1.3 million to purchase a house on Mont Calabasas Drive in Calabasas. The offer stated the Levys would pay $675,000 at closing and would obtain a bank loan secured by a deed of trust on the property for the remaining $625,000. On the same day

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[1] We refer to the parties individually by their first names for convenience and clarity.

Jack and Allison executed a document titled, "Gift Letter," which stated Jack would give Allison $775,000 "in time to close the mortgage transaction on the purchase of the property located at: Mont Calabasas." The letter further stated, "This is a bona-fide gift, and there is no obligation, expressed or implied either in the form of cash or future services, to repay this sum at this time."

The Levys' offer was rejected in December 2013. Shortly thereafter the Levys resubmitted their offer with an addendum, dated December 18, 2013, stating they were "offering 'all cash' at their original offered price." The offer was accepted in February or March 2014, and the transaction closed in April 2014. The settlement statement for the transaction shows the $1.3 million purchase price was paid by a deposit from Jack's bank account. The grant deed, recorded with the Los Angeles County Recorder on April 4, 2014, transferred the property to Allison and Michael as tenants in common, with Allison owning a 99 percent interest in the property and Michael a 1 percent interest.

Around the time of the home purchase, Jack provided the Levys an additional $100,000, the specific purpose of which was disputed at trial.

On May 22, 2014 Allison and Michael executed a quitclaim deed, transferring their interests in the property to themselves as community property with right of survivorship. In November 2014 the Levys obtained a loan of $400,000 from a private lender secured by the Mont Calabasas property. The loan was refinanced in early 2015 with the same lender, resulting in a loan of $420,227 secured by the property.

Allison filed a petition for dissolution of marriage in September 2015. At no point have the Levys repaid any of the

$1.4 million provided by the Lins in connection with the purchase of the Mont Calabasas property.

2. *The Lins' Complaint and Michael's Cross-complaint*

On March 17, 2016 the Lins filed a complaint and on July 24, 2017 a first amended complaint against the Levys alleging the parties had entered into an oral agreement pursuant to which the Lins loaned the Levys $1.4 million for the purchase of their home and the Levys had breached the agreement by failing to repay the loan. The first amended complaint also alleged causes of action for goods and services rendered, unjust enrichment, fraud (against Michael only) and promissory estoppel. Allison failed to respond to the complaint, and the Lins filed a request for entry of default against her on August 12, 2016. The court clerk entered the default the same day.

Michael moved for summary judgment or, in the alternative, summary adjudication on the breach of contract, goods and services and unjust enrichment causes of action in the first amended complaint. Summary adjudication was granted on the Lins' unjust enrichment claim, but the motion was otherwise denied.

On May 27, 2016 Michael filed a cross-complaint and on October 16, 2017 a first amended cross-complaint against the Lins and Allison seeking a declaration there was no enforceable loan agreement between the parties and the $1.4 million from the Lins was a gift. The cross-complaint also alleged causes of action for conspiracy, equitable indemnity and fraud (the latter two claims were alleged only against Allison and Betty Ann).

The Lins and Allison demurred to the first amended cross-complaint. The demurrer was sustained on the fraud and conspiracy causes of action only.

3. *Evidence at Trial*

Jack testified the Levys asked him for a loan of $1.3 million for the purchase of the Mont Calabasas house. He agreed on condition that, as soon as the Levys sold their current home, they would use the proceeds, which Jack believed would be approximately $400,000, to partially repay the loan. Jack testified the Levys promised to obtain an institutional loan secured by the property to repay the remaining balance. However, Jack also said that, if the Levys could not get a loan with a monthly payment similar to what they were currently paying, he would "come in as the father taking care of the family" and forgive part of the loan or accept monthly payments while charging a low interest rate so the Levys could have monthly payments they could afford. Jack did not communicate these latter options to the Levys.

Jack initially requested he and Betty Ann be listed as the owners of the property. Michael objected, purportedly for tax reasons. As a compromise Jack agreed Allison could hold title to 99 percent of the property. Jack testified he never would have loaned the Levys the money if he knew they were going to convert the property to community property.

When asked about the October 2013 gift letter, Jack said he did not read the document carefully upon signing it, and he never intended the funds to be a gift.

According to Jack, around the time the transaction closed, Michael asked for an additional $100,000 for an initial payment to contractors for remodeling the home. Jack agreed to lend the money, and the parties agreed it would be added to the original loan amount.

The Levys sold their former home approximately six months after they bought the Mont Calabasas house but did not use the proceeds to repay the Lins. When Jack asked the Levys for the money, they told him it had all been spent on the remodel. The Levys said they planned to take money out of Michael's retirement accounts to repay the Lins.

Jack was asked about a handwritten document dated March 25, 2014 that had been signed by the parties. The first line states, "1,400,000 Jack & [Betty Ann] gift." The document also includes the following language: "% to change according to amount [Michael] & [Allison] puts [*sic*] in for title," and "31 days we re-title to include Jack & Beth to avoid tax estate issues TBD re-title if decide to gift." Jack said the "1,400,000" referred to the $1.3 million loan to the Levys for the purchase of the house and the $100,000 contractor payment. He testified he recalled signing the document, but at the time he signed the $1.4 million was not identified as a gift. He said "gift" must have been added later. Although Jack did not specifically address the other statement in the document, he maintained it did not reflect the final agreement between the parties.

Betty Ann's testimony generally corroborated Jack's account of events. She said she never intended the $1.4 million to be a gift and she never told the Levys it was a gift. She recalled a meeting on March 25, 2014 with Jack and the Levys during which they discussed the terms of the loan. Michael drafted the handwritten document the parties signed during the meeting, but Betty Ann said she did not pay much attention to the conversation and did not understand what she was signing. She did testify, however, the document did not have the word

"gift" written next to the $1.4 million when she signed it and insisted she would not have signed it if it had.

Allison testified in support of her parents' case-in-chief.[2] She said Michael and Jack drafted the initial offer on the house, and she did not recall who suggested the gift letter be for $775,000. Regardless of the gift letter, however, it was always her understanding the funds provided by the Lins were a loan. Once the all-cash offer was accepted, the Levys asked the Lins to loan them the entire purchase price. Allison's recollection of the payback structure was the same as her father's—the Levys would give the Lins the proceeds from the sale of their former house as an initial payment on the loan and would repay the remaining balance by obtaining an institutional loan. When their former house eventually sold, the Levys used the proceeds to pay for remodeling the new house.

As a condition of the loan Allison was to own 99 percent of the Mont Calabasas house with Michael owning the remaining 1 percent. Shortly after closing, Michael told Allison he would divorce her if she did not grant him a 50 percent interest in the house. Allison did not want to change the title but agreed because she was under a great amount of stress due to her daughter's diagnosis of diabetes and her own abuse of prescription drugs. She did not tell her parents she had modified ownership of the property because she knew it violated their agreement.

As for the additional $100,000 the Lins loaned the Levys, Allison testified it was a direct payment to the seller to induce

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[2] Allison appeared at trial only as a cross-defendant, never having moved to vacate her default on the Lins' complaint.

him to ensure the Levys' offer was accepted by the seller's lender.[3] Michael did not tell the Lins the true purpose of the funds but instead said it was to purchase some of the seller's furniture and décor.

Allison recalled signing the March 25, 2014 handwritten document; but, consistent with her parents' recollections, she did not recall the word "gift" appearing next to the $1.4 million. She said she was not "fully engaged" in reviewing the language in the document when she signed it.

Michael testified the $1.4 million was intended to be a gift rather than a loan. He explained when he first discussed the transaction with Jack, they contemplated the $675,000 down payment might be a gift, and, if Jack advanced any additional funds, part of that sum might be a loan. However, they did not determine the total amount Jack would pay toward the purchase or how much of it would be a loan because Michael thought the chances of the offer being accepted were low.

Once the all-cash offer was accepted, the parties met on March 25, 2014 to discuss details of the transaction. Michael testified the handwritten document prepared at that meeting represented the final agreement between the parties, which, according to Michael, included a $1.4 million gift to the Levys. Michael's testimony was unclear as to the purpose of the additional $100,000 paid by Jack. Michael initially testified he did not recall asking Jack for funds to purchase furniture in the home and he paid for the furniture from his own funds. However, later in his testimony Michael stated the $1.4 million gift

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[3] Because the purchase of Mont Calabasas was a short sale, the seller's lender had to approve the transaction.

represented the purchase price of the house plus $100,000 for furniture and décor. Michael denied paying the seller directly to ensure acceptance of the offer.

Michael acknowledged the March 25, 2014 document did not state Allison was to own 99 percent of the property, but he said the condition was orally accepted at the time. However, Michael was not satisfied with the arrangement because it meant he would be giving up whatever separate property he had invested in the couple's first home. As a result, the parties agreed to change the percentage ownership at a later date. This was memorialized in the handwritten document with the following language: "% to change according to amount [Michael] & [Allison] puts [*sic*] in for title," which referred to the amount of money each of them had contributed to purchase their first home together. Michael further explained he, Allison and Betty Ann agreed prior to closing on the Mont Calabasas home that title would be changed to be held as community property, but they did not inform Jack of this agreement.

Michael testified Jack never requested the Levys repay the $1.4 million. Michael also stated he was never told the money had been a loan until after Allison had initiated dissolution proceedings.

4. *The Trial Court's Ruling*

The trial court issued a 15-page statement of decision finding the parties had orally agreed the Lins would provide the Levys with $1.4 million for the purchase of the Mont Calabasas property. Of the funds provided, $775,000 was a gift to Allison, and $625,000 was a loan to Allison and Michael. The court rejected the parties' opposing positions the money was either entirely a loan or a gift, noting the witnesses' testimony was

"clearly influenced by the growing strains associated with the divorce, and the financial stress on each of the Levys." The court found, "The weaknesses of the [parties'] extreme interpretations of the agreement have left the Court with the conviction that the truth lies in between: the contract was in part a loan, and in part an agreement to make a gift."

The court concluded the Lins had complied with their obligations under the oral agreement by paying $1.4 million in connection with the house purchase and the Levys had breached the agreement by failing to repay any of the $625,000 loan. In its judgment the court awarded the Lins damages of $625,000 jointly and severally against Michael and Allison on the breach of contract cause of action. The court's judgment declared the Lins gave $775,000 to Allison as a gift and loaned $625,000 to the Levys.[4]

Michael filed a timely notice of appeal from the judgment.[5]

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[4] The court found in favor of Michael on the complaint's cause of action for fraud. Based on its finding on the breach of contract claim, the court did not reach the cause of action for promissory estoppel, nor did the court address the cause of action for goods and services rendered. The court entered judgment in favor of the Lins and Allison and against Michael on his equitable indemnity cross-claim. Only the breach of contract and declaratory judgment causes of action are at issue on appeal.

[5] The court clerk filed and served the judgment on the parties on September 25, 2018. Michael did not file his notice of appeal until December 13, 2018, three weeks after the 60-day deadline. (See Cal. Rules of Court, rule 8.104(a)(1)(A).) However, Michael filed for chapter 11 bankruptcy protection on October 9, 2018, resulting in an automatic stay of the litigation. (See 11 U.S.C. section 362(a).) The bankruptcy court lifted the automatic stay for this case on December 4, 2018. Pursuant to

DISCUSSION

1. *Governing Law and Standard of Review*

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821; accord, *Professional Collection Consultants v. Lujan* (2018) 23 Cal.App.5th 685, 690.) "'[A] contracting party's unjustified failure or refusal to perform is a breach of contract.'" (*Cates Construction, Inc. v. Talbot Partners* (1999) 21 Cal.4th 28, 54; accord, *JRS Products, Inc. v. Matsushita Electric Corp. of America* (2004) 115 Cal.App.4th 168, 181-182.) "The elements of a breach of oral contract claim are the same as those for a breach of written contract." (S*tockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453; see also Civ. Code, § 1622.)

"'"In general, in reviewing a judgment based upon a statement of decision following a bench trial, 'any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]' [Citation.] In a substantial evidence challenge to a judgment, the appellate court will 'consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving

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title 11 of the United States Code section 108(b), Michael had 60 days after the removal of the bankruptcy stay to file his notice of appeal in this case, making his December 13, 2018 filing timely. (Cf. *ECC Construction, Inc. v. Oak Park Calabasas Homeowners Assn.* (2004) 118 Cal.App.4th 1031, 1039-1040.)

conflicts in support of the [findings]. [Citations.]' [Citation.] We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment."'" (*Tribeca Companies, LLC v. First American Title Ins. Co.* (2015) 239 Cal.App.4th 1088, 1102; accord, *Sav–On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334 ["'questions as to the weight and sufficiency of the evidence, the construction to be put upon it, the inferences to be drawn therefrom, the credibility of witnesses . . . and the determination of [any] conflicts and inconsistencies in their testimony are matters for the trial court to resolve"']; *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571 ["'[w]hen two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court"']; *Harry Carian Sales v. Agricultural Labor Relations Bd.* (1985) 39 Cal.3d 209, 220 ["findings based on the credibility of witnesses will not be disturbed unless the testimony is 'incredible or inherently improbable"']; *Fuentes v. AutoZone, Inc.* (2011) 200 Cal.App.4th 1221, 1233 ["'testimony of a witness offered in support of a judgment may not be rejected on appeal unless it is physically impossible or inherently improbable and such inherent improbability plainly appears"'].)

We review the trial court's legal conclusions de novo. (*McPherson v. EF Intercultural Foundation, Inc.* (2020) 47 Cal.App.5th 243, 257 ["[o]n appeal from a judgment based on a statement of decision after a bench trial, we review the trial court's conclusions of law de novo"]; *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1515 [whether facts found by trial court are legally sufficient to support judgment subject to

de novo review]; *ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1266 ["'[t]o the extent the trial court drew conclusions of law based upon its findings of fact, we review those conclusions of law de novo'"].)

2. *There Was Sufficient Evidence the Parties Agreed to a $775,000 Gift and a $625,000 Loan*

Michael contends there was no evidence to support the court's finding the parties contracted for a partial loan and a partial gift. Even if Jack intended this arrangement, Michael argues, Michael did not agree to it. Thus, there was no mutual consent to establish a contract.

"Contract formation requires mutual consent, which cannot exist unless the parties 'agree upon the same thing in the same sense.' . . . 'Mutual consent is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts, and not their unexpressed intentions or understandings.'" (*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 208; see Civ. Code, § 1580.)

Whether the parties mutually agreed to a contract—that is, whether a contract exists—and, if so, the determination of its terms are questions of fact. (*Chicago Title Ins. Co. v. AMZ Ins. Services, Inc.* (2010) 188 Cal.App.4th 401, 422 ["mutual assent is a question of fact"]; *Bustamante v. Intuit, Inc., supra,* 141 Cal.App.4th at p. 208 ["[w]here the existence of a contract is at issue and the evidence is conflicting or admits of more than one inference, it is for the trier of fact to determine whether the contract actually existed"].) In particular, "[w]hen the contract relied on is oral, its interpretation in the first instance is a question of fact to be determined by the [factfinder]. [Citation.]

The question, therefore, [is] one of evidence, and it [is] for the [factfinder] to determine from the facts and circumstances proved, including, of course, the conversations between the parties, whether or not a contract was proven." (*Treadwell v. Nickel* (1924) 194 Cal. 243, 261-262; see also *Esbensen v. Userware Internat., Inc.* (1992) 11 Cal.App.4th 631, 640 [determination of oral agreement's terms was question for jury].)

Substantial evidence supports the trial court's conclusion the parties agreed to a partial gift. To support its finding of a $775,000 gift, the court relied primarily on the gift letter executed by Jack. The court explained, "This document is not ambiguous. [Jack] stated that he was experienced in real estate transactions, and so he would know that this document was being placed into interstate commerce with an expectation that it would be relied upon by others . . . ." Emphasizing that Jack had testified he did not intend to make a $775,000 gift to Allison, Michael argues there was no testimony the gift letter was intended to be part of the final transaction, which occurred months after its execution. As the exclusive arbiter of credibility, however, the trial court was entitled to reject Jack's testimony and rely instead on the unambiguous statement in the gift letter. (*Filip v. Bucurenciu* (2005) 129 Cal.App.4th 825, 836 ["'[s]o long as the trier of fact does not act arbitrarily and has a rational ground for doing so, it may reject the testimony of a witness even though the witness is uncontradicted'"].) Even though the final transaction occurred months later, it was consummated pursuant to the terms of the original offer, albeit with an addendum converting it to an all-cash purchase. In the absence of undisputed evidence of a renunciation of the gift letter, it was

reasonable for the trial court to infer its terms remained part of the transaction.

Substantial evidence also supports the trial court's finding the remaining $625,000 at issue was a loan. Jack, Betty Ann and Allison testified all funds provided to the Levys were loans, and even Michael testified a loan for part of the funds had been contemplated by the parties. While the court credited in part this testimony, having already concluded Jack intended to make a gift to Allison of $775,000, it was reasonable to infer the remaining $625,000 was loan.[6]

The court noted Jack testified in support of his contention all funds were loans that he had expected the Levys to obtain a $1 million loan, while maintaining the same monthly payment they had on their prior home loan of $600,000. The court rejected this testimony, explaining it was unlikely Jack would have believed the Levys could qualify for a $1 million loan given their financial situation, which was known by the Lins. It was additionally unlikely the Levys would have been able to obtain a $1 million loan with the same monthly payment as their existing $600,000 loan. Given these circumstances and the unambiguity of the gift letter, there was substantial evidence supporting the

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[6] The court found untrustworthy two documents offered by Michael in support of his position that all the funds were gifts. As to the March 25, 2014 handwritten agreement, the court found the word "gift" had been added after the parties signed it, as Jack, Betty Ann and Allison had testified. With respect to a second document, purportedly written by Jack and stating the $1.3 million was a gift, which Jack testified at deposition he had not signed, the court found the signature did not match Jack's other signatures in the record.

findings the funds at issue were part gift and part loan, with the loan amount being $625,000.

On appeal Michael primarily argues the trial court's hybrid finding of partial loan and partial gift was impermissible, contending the court was obligated to accept one or the other party's position in its entirety. However, as discussed, it was a factual question for the trial court to determine whether an oral contract was formed and, if so, what terms were included in the agreement. While the parties set forth their positions, the court was entitled to reject parts of the evidence and draw any reasonable conclusion supported by the evidence it found credible. (See *Tribeca Companies, LLC v. First American Title Ins. Co.*, *supra*, 239 Cal.App.4th at p. 1102; *Filip v. Bucurenciu, supra*, 129 Cal.App.4th at p. 836.)

3. *The Trial Court Did Not Err in Finding the Oral Contract Was Sufficiently Definite To Be Enforced*

"'Under California law, a contract will be enforced if it is sufficiently definite (and this is a question of law) for the court to ascertain the parties' obligations and to determine whether those obligations have been performed or breached.' [Citation.] 'To be enforceable, a promise must be definite enough that a court can determine the scope of the duty[,] and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages.' [Citations.] 'Where a contract is so uncertain and indefinite that the intention of the parties in material particulars cannot be ascertained, the contract is void and unenforceable.'" (*Bustamante v. Intuit*, *Inc., supra,* 141 Cal.App.4th at p. 209; accord, *Weddington Productions*, *Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811 ["[i]f . . . a supposed 'contract' does not provide a basis for determining what

obligations the parties have agreed to, and hence does not make possible a determination of whether those agreed obligations have been breached, there is no contract"]; see generally Rest.2d, Contracts, § 33, subd. (2) ["[t]he terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy"].) Moreover, ""'[t]he law leans against the destruction of contracts because of uncertainty and favors an interpretation which will carry into effect the reasonable intention of the parties if it can be ascertained.'"" (*Moncada v. West Coast Quartz Corp*. (2013) 221 Cal.App.4th 768, 777.)

Michael argues that, even if the parties agreed to a contract as found by the trial court, it cannot be enforced as a matter of law because it did not contain sufficiently specific terms regarding repayment. The trial court properly rejected this argument.

The trial court found the parties' agreement did not contain a definite date upon which repayment was to be made, but found the parties agreed "as much as possible would be repaid upon the sale" of the Levys' former home. The testimony was undisputed that the Levys had approximately $400,000 of equity in their former home and intended to sell the home soon after moving into Mont Calabasas. The court also found the Levys "would borrow the amount necessary to repay the rest as soon as reasonably possible." Substantial evidence supports these findings. (See *Tribeca Companies, LLC v. First American Title Ins. Co*., *supra,* 239 Cal.App.4th at p. 1102.)

The amount owed by the Levys was certain such that an appropriate remedy could be assessed. The repayment terms as found by the trial court were sufficiently definite to enforce. The

repayment was to be made in two installments: approximately $400,000 immediately following the sale of the Levys' former home and the balance upon the Levys obtaining a new home loan secured by Mont Calabasas. Further, even if the court had not found the parties agreed to the repayment terms, "[i]n the absence of a specified time of payment, a reasonable period is allowable under Civil Code section 1657." (*Patel v. Liebermensch* (2008) 45 Cal.4th 344, 352 [contract's failure to specify time of payment did not render it unenforceable].)

DISPOSITION

The judgment is affirmed. The Lins and Allison are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J. DILLON, J.*

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* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.